

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA v. DEREK G. SPENCER, Defendant.	)))))))	 Case No. 3:22cr5-1 (DJN)
---	---------------------------------	---

**DEFENDANT DEREK SPENCER’S SENTENCING POSITION/
OBJECTION TO SUPERVISORY ROLE ENHANCEMENT AND
REQUEST FOR DEPARTURE/VARIANCE SENTENCE**

Mr. Derek Spencer, through counsel, files his position with regard to sentencing pursuant to Rule 32 of the Federal Rules of Criminal Procedure. Mr. Spencer has received and reviewed the presentence report (“PSR”) with the assistance of counsel. He has one objection to the guideline calculation regarding his two-level enhancement under USSG § 3B1.1(c), as noted below. Mr. Spencer also seeks a departure (under USSG § 5K2.16) or a variance sentence based on his voluntary disclosure of criminal conduct. Mr. Spencer comes before the Court after pleading guilty to one count of bribing a prison official in violation of 18 U.S.C. § 201(b)(1)(c) (Count 2). For the reasons discussed below, Mr. Spencer requests that this Court impose a sentence of 18 months on Count 2, nine months of which should be served on home detention.

I. Introduction

Mr. Spencer’s involvement with the prison contraband scheme began when UC-1, a guard who worked in the visitation section at FCI Petersburg Low, approached Mr. Spencer, an inmate who was also working in the visitation section, and asked him to assist the officer with bringing contraband into the prison. *See* Incident Report by Officer Norman, attached as Ex. 1; Spencer Affidavit, attached as Ex. 2; FBI Affidavit In Support of Application for Search Warrant at 3-4, attached as Ex. 3, (Mr. Spencer was “approached by [UC-1] last year [UC-1] told inmate

Spencer he could bring contraband cell phones and cigarettes into FCC Petersburg.”); FBI Interview from July 1, 2020, attached as Ex. 4 at 88 (it was reported that Mr. Spencer was working in visitation when UC-1 approached him), all filed under seal. UC-1 had established a scheme involving inmates at FCI Petersburg to assist him with distributing contraband throughout FCI Petersburg Low. See Ex. 4 at 13 (he was already using other inmates to bring contraband into the prison when he approached Mr. Spencer); Ex. 3 at 4. Having only a brief period of time remaining on his federal sentence,¹ Mr. Spencer was placed in a difficult position with the proposal presented by UC-1.

Mr. Spencer did in fact engage in the unlawful conduct proposed by UC-1; he readily admits he violated the law. He accepts full responsibility for his conduct and also admits he involved his girlfriend, Tylicia Jones, in this scheme. But his conduct should be placed in its proper perspective in terms of the nature and extent of his involvement in the scheme, the prisoner/guard dynamic at work, and Mr. Spencer’s early disclosure of his conduct to the authorities at FCI Petersburg Low. To his credit, he approached the prison authorities and admitted that he was engaged in this scheme before the authorities came to him. See Ex. 1. The full extent of this scheme and UC-1’s corrupt conduct may never have come to light had Mr. Spencer not come forward. He has also demonstrated significant strides towards rehabilitation since his unlawful conduct ended.

Contraband in prisons in this country is a very serious problem, especially in federal prisons. In 2016, the Bureau of Prisons reported on the “persistent problem” it has faced with contraband smuggling in its prisons. <https://oig.justice.gov/reports/2016/e1605.pdf> at 1. Cell phones were “the most common type of contraband recovered from fiscal years (FY) 2012 through

¹ UC-1 tended to select people who had little time remaining on their federal sentences, as another inmate involved in UC-1’s scheme, was released by the time Mr. Spencer had his meeting with SIA Norman. See Ex. 1.

2014.” *Id.* During that time period, 8700 unlawful cell phones were recovered from federal prisons. *Id.* That number can only be expected to have risen since then, considering the profit motive, the participation of guards in these schemes, and the easy access to phones in prisons. Clearly, the interdiction efforts of the BOP have not served to stem the flow of this contraband. (“the BOP lacks a comprehensive contraband tracking system.” *Id.*). The BOP acknowledged in its report that prison guards bear a large measure of the responsibility for the introduction of contraband to federal prisoners. In fact, that appears to be the root of the problem.

II. Objection to Role Enhancement Under USSG § 3B1.1(c)

Mr. Spencer objects to the two-level aggravated role enhancement under USSG § 3B1.1(c), found at page 11 of the presentence report. In support of this objection he states the following:

Prior to the entry of a plea in this case, the guidelines were calculated by the parties in the plea agreement. The plea agreement (ECF No. 34 at 3) specifically noted that:

in accordance with Federal Rule of Criminal Procedure 11(c)(1)(B), the United States and the defendant stipulate and will recommend to the Court that the following provisions of the Sentencing Guidelines apply:

Guideline(s)	Description	Offense Level
2C1.1(a)(2)	Base offense level (Defendant is Not Public Official)	12
2C1.1(b)(1)	Offense Conduct Involved More Than One Bribe	+2
2C1.1(b)(3)	Offense Involved Public Official in Sensitive Position	+4

As demonstrated from the language in the plea agreement, the parties did not anticipate an enhancement under Section 3B1.1(c) in the written plea agreement.

The facts underlying the enhancement and the law governing the application of this guideline section do not support this enhancement. Unlike Mr. Spencer, Ms. Jones had previously engaged in this behavior – assisting in bringing contraband into federal prison - with her brother,

who had been incarcerated at FCI Petersburg.² In the Statement of Facts, ¶ 6(b) (p. 6 of PSR), a text message between Tylicia Jones and Mr. Spencer was addressing suboxone being smuggled into the prison. Ms. Jones stated that they sell for “\$10 on the street, bro sold his inside for \$75 each. Thry [sic] come in a box of like 30 individually wrapped.” According to Mr. Spencer, Ms. Jones told him that when her brother was incarcerated, Ms. Jones helped him introduce contraband into the prison. When Mr. Spencer suggested that she assist him with the contraband scheme, Ms. Jones did not hesitate to engage.

In the Statement of Facts, text messages between Ms. Jones and another person helping to introduce contraband to federal prisoners at FCI Petersburg (F.H.) are discussed. PSR ¶ 13. In addition to her unlawful conduct with Mr. Spencer, Ms. Jones was engaging in this conduct with others, documented by the “216 text messages” between Ms. Jones and F.H. between July 2019 and September 2019. Jones sent F.H. \$750 and said that the “Second phone sold and Gucci needs it in the morning.”

When the search warrant was executed at Ms. Jones’ home on August 5, 2020, as reported in the Statement of Facts at ¶ 10, the FBI found “a spreadsheet titled ‘Operation OT’ that outlined the costs spent on the contraband that entered the prison.” PSR page 9. Mr. Spencer did not keep any spreadsheets or records of transactions. Also found at Ms. Jones’ home was much of the merchandise that she was still intending to introduce into the prison. Mr. Spencer had completely divorced himself from the scheme with UC-1 at the time of the search of Mr. Jones’s residence. See Exs. 1 and 4. Ms. Jones was not being managed or supervised by Mr. Spencer, nor was she recruited by Mr. Spencer in the manner required under the applicable guideline.

² See also Ex. 4 at 16 (Mr. Spencer stated, “I never did anything like that before.”).

The law requires that a defendant's offense level under the Sentencing Guidelines is to be enhanced by two levels if the defendant "was an organizer, leader, manager, or supervisor in any criminal activity." USSG § 3B1.1(c). The enhancement is warranted if the defendant was an organizer, leader, manager, or supervisor "of one or more other participants." *Id.* cmt. n.2. Under USSG § 3B1.1(C), App. N. 4, "This adjustment does not apply to a defendant who merely suggests committing the offense."

In the case of *U.S. v. Slade*, 631 F.3d 185, 190 (4th Cir. 2011), the Fourth Circuit stated the following:

Although the Guidelines do not define the term manager, this Court utilizes the dictionary definition: "a person whose work or profession is the management of a specified thing (as a business, an institution, or a particular phase or activity within a business or institution)." *United States v. Chambers*, 985 F.2d 1263, 1268 (4th Cir. 1993) (quoting Webster's Third New International Dictionary 1372 (1986) (emphasis omitted)). The enhancement is appropriate where the evidence demonstrates that the defendant "controlled the activities of other participants" or "exercised management responsibility." *Bartley*, 230 F.3d at 673-74 (internal quotation marks omitted).

Mr. Spencer's relationship with Ms. Jones with regard to the criminal conduct did not rise to the level of a manager. He did not control the activities of Ms. Jones. He did not exercise management responsibilities over her. That was UC-1's role. UC-1 ran the show. Also, communications between Mr. Spencer and Ms. Jones made clear that he was not directing or controlling her activities. She stated to him that she was not going to tolerate him telling her the way he wants to do things (Ex. 5 at 5; Bates No. 3428) and "[u]ltimately, I [Ms. Jones] make the decision to do or not do." Ex. 5 at 6; Bates No. 3429. She said, "I'm not a YES Woman to him" and "I'm not gonna do everything you ask of me all the time." Ex. 5 at 7; Bates 3430. "As you know you're in control of nothing but yourself . . ." Ex. 5 at 8; Bates 3431.

UC-1 approached Mr. Spencer regarding the criminal activity, and UC-1 asked Mr. Spencer to find someone on the outside to assist with the scheme. Ex. 4 at 14-15.³ Mr. Spencer merely followed UC-1's instructions, and suggested to Ms. Jones that she assist him, and she readily agreed. Ms. Jones dealt directly with UC-1 on the outside of the prison. UC-1 provided his phone number to Ms. Jones and instructed Ms. Jones about buying the phones. Ex. 4 at 37, 41.⁴ UC-1 was the one who set the prices and determined how much money Mr. Spencer and Ms. Jones would receive from the criminal activity, and then brought the contraband into the prison. He received up to \$70,000. *See* Ex. 1; Ex. 3 at 4. Ms. Jones and Mr. Spencer received, at the most, \$1000 each, and the payments were "pretty much the same" for both of them. PSR ¶ 18; Ex. 4 at 44-45; 55-56.

It should also be noted that Ms. Jones' romantic relationship with Mr. Spencer vacillated from one day to the next. By the time Mr. Spencer had reached out to the authorities, they were "kind of on a shaky thing." Ex. 4 at 32. And at the time of the execution of the search warrant and her statement to the authorities, she bore a significant degree of animosity towards him. This would suggest that she was particularly biased against Mr. Spencer. Her statement to law enforcement should be considered in this context. *See* Ex. 5 at 1-2, Bates No. 8-9, and PSR ¶ 18.

Based on the evidence before the Court, it is clear that Ms. Jones was not going to allow herself to be managed or controlled by anyone. Additionally, at the time Ms. Jones reported the conduct to the authorities (PSR ¶ 20), her relationship with Mr. Spencer had dissolved. They were

³ UC-1 already had inmates assisting him with his contraband smuggling scheme when he approached Mr. Spencer. Ex. 4 at 13.

⁴ UC-1 reached out directly to Ms. Jones; Mr. Spencer did not even know about their payment arrangement. Ex. 4 at 15-16. Additionally, Ms. Jones had UC-1's phone number and cash apps. *Id.* at 31-32.

no longer involved in a romantic relationship and there was bitterness, as demonstrated by the texts exchanged in October of 2019. Ex. 5 at 6.⁵

The two-level enhancement should not be applied to Mr. Spencer under the facts of this case and under the law of this Circuit. With this enhancement removed, as provided in the plea agreement at 3, Mr. Spencer's offense level should stand at offense level 15 (18 minus 3), Criminal History Category III, with a guideline range of 24-30 months. Below, Mr. Spencer submits several arguments in support of a variance sentence to level 13, CHC III and imposition of a sentence at the low end of that range: 18 months, 9 of which should be served on home detention.

III. Motion for Departure/Variance Based on Voluntary Disclosure

Mr. Spencer seeks a departure from his guidelines based on his voluntary disclosure of the offense under USSG § 5K2.16. Mr. Spencer concedes that the facts of his case may not be a perfect fit for this departure provision; however, if the Court disagrees with Mr. Spencer, and finds that a departure is not appropriate, the Court should consider the circumstances of his volunteering the information regarding the offense to the authorities before being approached by the authorities in support of a request for a variance sentence.

Post-Booker, a sentencing court must engage in a multi-step sentencing process that begins with correctly determining the defendant's Guideline range. *United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006). "Next, the court must determine whether a sentence within that range . . . serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors." *Id.* (alterations in original) (internal quotation marks omitted). "In doing so, the district court should first look to whether a departure is appropriate based on the Guidelines

⁵ In the text exchanges from 10/20/2019, which were reflective of the vacillating nature of their relationship, Ms. Jones was calling Mr. Spencer a host of different names, using considerable profanity. She was telling him not to call any more and that she hated him. Ex. 5 at 1-2.

Manual or relevant case law.” *Id.* If it is, the court may depart, or if the “departure range still does not serve the factors set forth in § 3553(a), the court may then elect to impose a non-guideline sentence (a ‘variance sentence’).” *Id.* As part of this process, “[t]he district court must articulate the reasons for the sentence imposed, particularly explaining any departure or variance from the guideline range.” *Id.* Upon review of the facts and circumstances of Mr. Spencer’s voluntary disclosure of the criminal activity in this case, he asks that the Court grant him a departure from the guidelines. If the Court does not believe a departure is appropriate he asks that the Court, based on those facts and circumstances find that a variance sentence is appropriate.

Under USSG § 5K2.16, the voluntary disclosure departure provision of the federal sentencing guidelines, the section reads as follows:

If the defendant voluntarily discloses to authorities the existence of, and accepts responsibility for, the offense prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a downward departure may be warranted. For example, a downward departure under this section might be considered where a defendant, motivated by remorse, discloses an offense that otherwise would have remained undiscovered. This provision does not apply where the motivating factor is the defendant’s knowledge that discovery of the offense is likely or imminent, or where the defendant’s disclosure occurs in connection with the investigation or prosecution of the defendant for related conduct.

Under the language of the departure, Mr. Spencer “voluntarily disclose[d] to authorities the existence of and accept[ed] responsibility for, the offense” He submits his disclosure came before the discovery of the magnitude of the offense, but concedes that some of the offense conduct may have been discovered notwithstanding his disclosures. Additionally, the offense conduct was likely to be discovered through the analysis of Mr. Spencer’s phone that was found in November of 2019 in his cell.⁶ But again, the scope of this offense and the people involved may never have

⁶ However, the phone that was recovered from Mr. Spencer’s cell, apparently, had not been fully analyzed by July 1, 2020. The FBI Agents said, “they were going to track down the phone and get it analyzed so that

been discovered had Mr. Spencer not come forward. And Mr. Spencer submits that he did not have any knowledge that the phone was being analyzed or that the offense was likely to be discovered when he came forward. As far as he knew, the offense conduct was not going to be discovered absent his disclosure. He disclosed the conduct to the authorities because he was hoping to get his prison sentence reduced; he wanted an early release from prison and shared that with SIA Norman.

In the report prepared by Officer Norman, Ex. 1, Norman stated that the June 11, 2020 interview was conducted at Mr. Spencer's request. Mr. Spencer reported that he had previously approached another officer at the prison in May of 2020 (Ex. 4 at 22), to discuss the misconduct; clearly, Mr. Spencer approached the officers before any officers came to him about the contraband scheme.

Mr. Spencer submits that his early disclosure of the scheme to the authorities, whether through a departure or a variance, should result in a reduction of his offense level to a level 13. With a CHC of III, his resulting guideline range would be 18-24 months.

IV. Sentencing Factors under 18 U.S.C. § 3553(a)

After considering the appropriately-calculated advisory guideline range, courts are to consider all the factors under 18 U.S.C. § 3553(a) in reaching the appropriate, individualized sentence for the particular case. *See Gall v. United States*, 552 U.S. 38, 49 (2007); *Kimbrough v. United States*, 552 U.S. 58, 90 (2007) (observing that the Guidelines “now serve as one factor among several courts must consider in determining an appropriate sentence”). Title 18 U.S.C. § 3553(a) commands courts to consider seven factors when determining the appropriate sentence to impose on a particular defendant. 18 U.S.C. § 3553(a)(1)–(7). Among these is the applicable Guidelines range, *id.* § 3553(a)(4), which a court must calculate correctly in every sentencing

we can just obviously prove that you are telling the truth and everything like that. So we'll look at what's on the phone, try to pull the numbers from Tylicia, things like that.” Ex. 4 at 104-105.

proceeding. *Gall*, 552 U.S. at 49. Yet the Guidelines range is merely a “starting point.” *Id.* A sentencing judge’s “overarching duty” is to ultimately impose an individualized sentence that is “sufficient, but not greater than necessary” to serve the purposes of sentencing delineated in §3553(a). *Pepper v. United States*, 562 U.S. 476, 491 (2011).

These purposes include the need for a sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to adequately deter criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. §§ 3553(a)(2)(A)–(D). The other factors a sentencing court must consider are 1) the nature and circumstances of the offense and the history and characteristics of the defendant; 2) the kinds of sentences available; 3) any pertinent policy statement issued by the United States Sentencing Commission; 4) the need to avoid unwarranted sentencing disparities among defendants with similar records and conduct; and 5) the need to provide restitution to any victims of the offense. *Id.* §§ 3553(a)(1), (3), (5)–(7).

In short, what § 3553(a) requires in practice is clear: after giving both parties an opportunity to argue for whatever sentence they deem appropriate, a sentencing court must then “consider *all* of the § 3553(a) factors to determine whether they support the sentence requested by a party.” *Gall*, 552 U.S. at 49–50 (emphasis added).

It is a “uniform and constant” tradition of the federal judiciary for a sentencing judge to “consider every convicted person as an individual” and to approach “every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Pepper*, 562 U.S. at 487 (citing *Koon*, 518 U.S. at 113). Accordingly, judges are required to make “an individualized assessment based on the facts presented” in any given case, *Gall*, 552

U.S. at 50, to ensure that a corresponding sentence “fit[s] the offender and not merely the crime,” *Pepper*, 562 U.S. at 487–88 (citing *Williams v. New York*, 337 U.S. 241, 247 (1949)).

V. Discussion of the Facts Related to the § 3553(a) Factors

In light of all of the sentencing factors applicable to this case, Mr. Spencer should face a guideline range of 18-24 months (offense level 13, CHC III), which is two levels below the guidelines suggested to the Court in the plea agreement. This guideline range is reflective of the early disclosure of the criminal conduct to the authorities, either through a departure or a variance, and the full scope of Mr. Spencer’s conduct and history. With its assessment of Mr. Spencer’s culpability, the Court should be mindful of the power imbalance of UC-1 and the defendant as correctional officer and prisoner. A sentence at the low end of these guidelines, with half the sentence served on home detention, is a fair and reasonable sentence, accounts for the facts and circumstances of the case, the history and characteristics of Mr. Spencer, and is a sentence that is sufficient, but not greater than necessary to address all 18 U.S.C. § 3553(a) factors.

A. Mitigating Facts of Mr. Spencer’s Involvement in the Scheme

Mitigating circumstances pertaining to Mr. Spencer’s involvement in the scheme to bring contraband into the prison should be carefully considered by the Court. First, Mr. Spencer was approached by UC-1 to assist him with his contraband smuggling conspiracy; Mr. Spencer did not seek out involvement in this criminal conduct. Second, Mr. Spencer reported that the total amount of money he and Ms. Jones obtained from the scheme over the course of the conspiracy was approximately \$1000. Ex. 4 at 44-45, 55-56. He estimated that UC-1 received close to \$70,000. Ex. 1. Third, Mr. Spencer self-reported his involvement to the authorities. All of these considerations should factor into this Court’s determination of a suitable sentence for Mr. Spencer, and the mitigating impact of these issues.

B. Medical and Mental Health Concerns

As demonstrated in the forensic report prepared by Dr. Michelle Nelson and in the presentence report, Mr. Spencer suffers from significant medical issues and mental health concerns. PSR ¶¶ 80-89. Due to a gunshot wound he suffered to his head in 2011 (the bullet is still lodged in his brain), he has been experiencing recurrent and regular seizures. PSR ¶ 81. He also noted serious headaches from the gunshot wound and nerve damage. *Id.*; Nelson Report at 2. The gunshot wound to the head also affected his memory. *Id.* He has been prescribed Dilantin, Keppra and Depakote for the seizures. *Id.* Unfortunately for Mr. Spencer, the authorities at Pamunkey Regional Jail have not been responsive to Mr. Spencer's medical needs and have not provided him with the prescriptions he has requested. *Id.* at 2-3; PSR ¶ 81. Mr. Spencer has suffered from asthma since he was a child and also has concerns with diabetes and hypertension. PSR ¶ 79. According to the Order granting his compassionate release motion in February of 2021, he tested positive for tuberculosis in April of 2020, lost motor function on the right side of his body, and suffered a series of grand mal seizures. *United States v. Spencer*, Case No. 2:15cr562 (E.D.Pa. 2015), ECF No. 78 at 1-2, 13-14.

Mr. Spencer has recently been found to suffer from moderate depression. Nelson Report at 8. During his assessment by Dr. Nelson, she found that "his mood was sad, his range of affect was restricted, he was frequently tearful, he appeared to lack energy, and there was a pervasive sense of hopelessness about him." She also found that "as part of being depressed, his cognitive processing speed was slow." *Id.* Dr Nelson also commented on Mr. Spencer's "adversely impacted" memory from the gunshot wound. *Id.*

This Court should carefully consider Mr. Spencer's physical and mental health concerns when crafting an appropriate sentence.

C. Post-Offense Rehabilitation and the Unlikelihood of Mr. Spencer's Return to Criminal Conduct Upon Release

In *Gall*, the Supreme Court upheld a downward variance from a guideline range of 30 to 37 months to a probationary sentence. The probationary sentence was imposed in large part because of the time that had passed between Gall's involvement of the drug conspiracy, and his outstanding self-motivated rehabilitation. 552 U.S. 38, 59 (2007). In *Pepper*, the Supreme Court held that after a defendant's sentence has been set aside on appeal, a sentencing court may consider evidence of the defendant's post-sentencing rehabilitation to support a variance from the advisory Guidelines range. 131 S. Ct. 1229, 1236. The *Pepper* Court expressly specified that its holding applied to variances "from the now-advisory Federal Sentencing Guidelines range." *Id.* Post-Offense rehabilitation is important to consider because it can shed light on the likelihood that he will engage in future criminal conduct, a central factor that district courts must assess when imposing sentence. See §§ 3553(a)(2)(B)-(C); *Gall*, 552 U.S., at 59, 128 S. Ct. 586, 169 L. Ed. 2d 445 ("Gall's self-motivated rehabilitation . . . lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts" (citing §§ 3553(a)(2)(B)-(C))). Post-Offense rehabilitation can also be taken as the most accurate indicator of an individual's present purposes and tendencies. *Id.* at 1242-43 (2011).

The offense conduct in this case took place principally in the later months of 2019. Mr. Spencer discontinued his involvement in the criminal activity soon thereafter (UC-1 actually left the prison in January of 2020, Ex. 4 at 65, 101). Mr. Spencer was released from federal prison at Fort Dix under a compassionate release motion in February of 2021 pursuant to a motion filed in his case from 2015 in Pennsylvania. See *United States v. Spencer*, Case No. 2:15cr562 (TJS) (E.D.Pa. 2015), ECF No. 79, February 21, 2021. He was indicted in this case in January of 2022,

and incarcerated when he appeared in Richmond, Virginia on the new charges. Between February of 2021 and January of 2022, Mr. Spencer had no arrests or convictions for any criminal conduct; he had no contact with law enforcement during this time period. The magistrate judge in Pennsylvania, when Mr. Spencer appeared for the warrant charging this offense in the Richmond court, allowed Mr. Spencer to self-report to the Richmond court. *See* ECF No. 17 at 1. He did not find that Mr. Spencer was a danger to the community or a flight risk. And Mr. Spencer promptly appeared for his hearing in federal court in Richmond several days later. ECF No. 19. According to Mr. Spencer, the reason the magistrate judge in Pennsylvania released him was because his probation officer recommended that he self-report in Richmond. His successful completion of almost a year on supervised release should send a strong signal to this Court that Mr. Spencer will fully comply with the condition of his release, and will not pose a danger to the community.

Mr. Spencer's contacts in the community have reported that Mr. Spencer's conduct has significantly improved since his release from federal incarceration in February of 2021. His girlfriend, Ms. Crawford, characterizes him as a "great dad" to their daughter and that he is a "good guy." PSR § 76. She discussed how, when he was released, he "provided support and assistance to his parents." *Id.* Mr. Spencer's brother, Desmond, noted to the probation officer that Mr. Spencer "is now a responsible father," and has "become 'reliable' and 'different in a good way.'" *Id.* at 77.

In a letter submitted from a friend of the family, Theresa Dawson, attached as Ex. 7, Ms. Dawson explained that she has been a friend to Mr. Spencer for 20 years. She echoed the comments of Mr. Spencer's brother and girlfriend, explaining that Mr. Spencer was caring for his parents when he was on supervision in 2021, and has been a good father. Ms. Dawson described Mr. Spencer as "an honorable individual, a valuable community member, and a good human being." *Id.*

Additionally, Mr. Spencer wants the Court to know that he made regular restitution payments through the FRP program while incarcerated and, when on release from February of 2021 through January of 2022, he also made restitution payments. Once on release from these charges, he will resume payments towards his restitution obligations.

Mr. Spencer maintained steady employment throughout his period of release, (PSR ¶ 100), a stable residence, and obtained training for advancing future employment opportunities. While incarcerated, he completed 31 classes between June of 2018 and October of 2019, including history courses, earth science and business classes. PSR ¶ 98. During his time on supervised release in 2021, he completed several classes required for certification as a lead paint inspector. *See* PSR ¶ 99, and attached Exs. 8 and 9 (lead paint inspector certifications).

Between February 2021 and January 2022, Mr. Spencer was working for his mother's company, Selective Real Estate Group as a lead paint inspector and a maintenance worker. PSR ¶ 100. He also worked as a rent collector for her company. *Id.* Upon release, he intends to return to Philadelphia and continue his work with his mother's company. Prior to his incarceration period at FCI Petersburg, Mr. Spencer was working for his brother at Cell Zone, Inc. in Philadelphia. His brother had good things to say about Mr. Spencer's employment with him. *Id.* at 102.

Mr. Spencer has shown himself to be a good father, a good son, and a good worker with excellent job prospects upon his release from prison. Those interviewed for the presentence report shared a very positive outlook on Mr. Spencer's prospects for Mr. Spencer going forward. He has changed his outlook on life and was working to overcome what he lost during his previous years of incarceration. Based on his post-conviction rehabilitation, this Court can have confidence that Mr. Spencer will not reoffend and will become a constructive, productive member of his community. Therefore, a sentence of 18 months, with nine months to be served on home detention,

is an appropriate sentence that is sufficient, but not greater than necessary, to address all sentencing concerns.

D. The Prisoner/Guard Dynamic

Mr. Spencer's illegal conduct in this case came at the request of UC-1, who suggested to Mr. Spencer that he should help him with his contraband scheme. UC-1 had already engaged other prisoners in his scheme before approaching Mr. Spencer. Ex. 4 at 13. UC-1 was the catalyst of the criminal activity. Clearly, Mr. Spencer was placed in a very difficult position, having been propositioned by a prison guard. Mr. Spencer feared that declining this request by UC-1 could have placed him in peril. If he were to have ignored the request, this also could have raised suspicion by UC-1. If Mr. Spencer reported him for his unlawful activities, he would have been placed in the SHU during the investigation for protection (where he was placed when he ultimately voluntarily disclosed UC-1's conduct), and could have been the subject of threats and intimidation. The smuggling of contraband into FCI Petersburg has been carried out on a large scale for a long time; it would be extremely difficult for a prisoner to resist the request of a correctional officer to engage in this conduct. Mr. Spencer did, however, agree to engage in the conduct and accepts full responsibility for his actions. He also agrees that he suggested to Ms. Jones that she enter into the scheme. And he comes before the Court with a significant criminal history. But the conduct in which he engaged was not simple and straightforward, and this Court should be cognizant of the conflicts and dynamics impacting on the choices that Mr. Spencer made.

The dynamic between a correctional officer and an inmate in any prison (especially a federal prison) is one of discipline, intimidation and control. It is a power relationship of unequal roles. This power dynamic was not lost on Mr. Spencer when he was approached by UC-1. UC-1 reminded Mr. Spencer of this dynamic when he told him, "don't f*** with my money; I know

where your family lives.” See Ex. 4 at 84. Mr. Spencer asks that the Court consider the guard/prisoner relationship when deciding the appropriate sentence in this case.

E. Need for the Sentence Imposed to Comply with the Purposes of Sentencing

The overarching directive of § 3553(a) is for a sentencing judge to “impose a sentence sufficient, but not greater than necessary, to comply with” the four sentencing purposes delineated in § 3553(a)(2). When evaluated within the context of Mr. Spencer’s case, each of the sentencing purposes in turn supports his request for a sentence of 18 months, with 9 months to be served on home detention.

1. The Need for Just Punishment in Light of the Seriousness of the Offense

Beginning with the first sentencing purpose provided by the statute, the Court must impose a sentence that reflects the seriousness of the offense, promotes respect for the law, and provides just punishment. 18 U.S.C. § 3553(a)(2)(A). Mr. Spencer will be punished significantly for his conduct with an 18-month sentence. Every day of that sentence will be difficult for him given the circumstances of this case and his compromised physical and mental health. An 18-month sentence for Mr. Spencer is a sentence that reflects the seriousness of the offense, especially in light of the mitigating circumstances presented. It would promote his respect for the law that recognizes his offense was serious but a sentence that is tempered with mercy. And an 18-month sentence is a just one for Mr. Spencer given all of the circumstances discussed herein. It is sufficient but not greater than necessary to accomplish these stated goals.

2. The Need for Adequate Deterrence

Section 3553(a) next requires the Court to impose a sentence that “afford[s] adequate deterrence to criminal conduct.” 18 U.S.C. § 3553(a)(2)(B). Mr. Spencer has shown he is already deterred from criminal behavior, and will continue to be deterred based on an 18 month sentence

with 9 months of home detention. Upon release, Mr. Spencer will provide much needed assistance to his parents, and continue to provide for his girlfriend and daughter; he will not be committing any more crimes that may place him back in prison and removed from his loved ones.

3. The Need to Protect Society

The sentence imposed by a court must also “protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C). Society will be protected by an 18-month sentence for Mr. Spencer and the likelihood that he commits further crimes is minimized based on his recent term of supervised release, in which he remained free from any criminal convictions or charges. He has also reached the age, 47, at which he is unlikely to recidivate.

4. The Need to Provide Medical, Educational, and Vocational Assistance

Finally, Section 3553(a) requires that a sentence accord with a defendant’s need for effective educational or vocational training, medical care, and other correctional treatment. 18 U.S.C. § 3553(a)(2)(D). Recognizing that “imprisonment is not an appropriate means of promoting correction and rehabilitation,” 18 U.S.C. § 3582(a), and given the wide variety of medical and mental health conditions he faces, it appears that imprisonment is not the appropriate sentence to provide medical or mental health care. PSR ¶¶ 78-89. Mr. Spencer has shown that he has benefitted from educational experiences and vocational training while serving his federal sentence; he is prepared to continue those efforts when released.

This Court should also consider as a mitigating factor Mr. Spencer’s super-acceptance of responsibility and that his plea came in the midst of the COVID pandemic with Mr. Spencer facing serious medical concerns.

Mr. Spencer also requests that the Court consider recommending that Mr. Spencer be designated to a facility close to his family so that he can have the family and community support that is so vital to the imprisoned population.

Mr. Spencer has a very safe and supportive plan for his transition into the community. He will live with his mother who has a stable residence and employment available for her son. For the year between when Mr. Spencer was released from FCI Petersburg and when he was arrested for this offense, he was living a productive, constructive crime-free life in Philadelphia. He is more than capable of rehabilitation and reform.

A sentence of 18 months on Count 2, with 9 months to be served on home detention, is a fair and reasonable sentence.

Conclusion

For the foregoing reasons, Mr. Spencer requests that this Court impose a sentence of 18 months on Count 2, 9 months to be served on home detention. As set forth above, a sentence of 18 months is appropriate and sufficient, but not greater than necessary, to address the factors that the Court must consider under 18 U.S.C. § 3553(a).

Respectfully submitted,

DEREK G. SPENCER

By: /s/
Robert J. Wagner
Va. Bar No. 27493
Robert J. Wagner, PLC
Attorney for Mr. Spencer
101 Shockoe Slip, Suite J
Richmond, VA 23219
(804) 814-8172
(804) 494-5620 (fax)
robwagnerlaw@gmail.com

★		+13238687114 Amile	10/20/2019 3:14:47 PM(UTC-4)	
		I knew u was on some bull shit		
★		+13238687114 Amile	10/20/2019 3:15:19 PM(UTC-4)	
		RhNks for letting me know		
★		+14243942870	10/20/2019 3:15:28 PM(UTC-4)	
		Grow up. Have a good life		
★		+13238687114 Amile	10/20/2019 3:15:41 PM(UTC-4)	
		I'm wasn't the only one		
★		+13238687114 Amile	10/20/2019 3:15:49 PM(UTC-4)	
		Your a hoe		
★		+13238687114 Amile	10/20/2019 3:16:06 PM(UTC-4)	
		That's what u do		
★		+13238687114 Amile	10/20/2019 3:16:19 PM(UTC-4)	
		Acting like I'm all it was		
★		+13238687114 Amile	10/20/2019 3:16:43 PM(UTC-4)	
		To easy to let me go shows me like u said a million		
★		+13238687114 Amile	10/20/2019 3:17:09 PM(UTC-4)	
		You stupid		
★		+13238687114 Amile	10/20/2019 3:17:21 PM(UTC-4)	
		All I'm working on got us		
★		+13238687114 Amile	10/20/2019 3:17:28 PM(UTC-4)	
		U stupid		
★		+13238687114 Amile	10/20/2019 3:17:43 PM(UTC-4)	
		Don't call me anymore		
★		+13238687114 Amile	10/20/2019 3:17:46 PM(UTC-4)	
		I hate u		
★		+14243942870	10/20/2019 3:25:22 PM(UTC-4)	
		Attachments:		
				
		FullSizeRender.jpg		
				
		FullSizeRender.jpg		
★		+13238687114 Amile	10/20/2019 3:37:35 PM(UTC-4)	
		Fuck u		
★		+14243942870	10/20/2019 3:39:09 PM(UTC-4)	
		Ok		
★		+13238687114 Amile	10/20/2019 3:39:55 PM(UTC-4)	
		U hang up on me tell me u cool every 5 mins		

★		+13238687114 Amille	10/20/2019 3:39:06 PM(UTC-4)	
		Then delete me from your email		
★		+13238687114 Amille	10/20/2019 3:39:11 PM(UTC-4)	
		Fuck u		
★		+13238687114 Amille	10/20/2019 3:39:19 PM(UTC-4)	
		Keep the hoes u got		
★		+14243942870	10/20/2019 3:48:00 PM(UTC-4)	
		Ok		
★		+13238687114 Amille	10/20/2019 3:48:11 PM(UTC-4)	
		Lies		
★		+14243942870	10/20/2019 3:48:47 PM(UTC-4)	
		Ok		
★		+13238687114 Amille	10/20/2019 4:28:12 PM(UTC-4)	
		Attachments:  IMG_3567.png		
★		+13238687114 Amille	10/20/2019 4:28:37 PM(UTC-4)	
		You're so childish you remove me put me back on remove me every three days you the person that needs to grow up you got off the phone with me and said I'm not gonna call you anymore because all I said was that's all you call me and talk about is this profile sheet instead of saying good morning babe how was your fucking morning going you oh so what's up with that		
★		+13238687114 Amille	10/20/2019 4:29:01 PM(UTC-4)	
		And don't put me back on that motherfucker email shit fuck it I don't care and I'll be canceling my fucking ticket		
★		+14243942870	10/20/2019 4:30:49 PM(UTC-4)	
		Ok,,		
★		+13238687114 Amille	10/20/2019 4:31:14 PM(UTC-4)	
		U been talking to other bitches		
★		+14243942870	10/20/2019 4:33:11 PM(UTC-4)	
		About to block you,,Leave me alone,,you fucked up!!		
★		+13238687114 Amille	10/20/2019 4:34:05 PM(UTC-4)	
		I fucked yo lol		
★		+13238687114 Amille	10/20/2019 4:34:07 PM(UTC-4)	
		Ok		
★		+13238687114 Amille	10/20/2019 4:34:12 PM(UTC-4)	
		No u did		
★		+13238687114 Amille	10/20/2019 4:34:23 PM(UTC-4)	
		All u care about is you		

★		+13238687114 Arnille U not gone play me	10/20/2019 4:34:36 PM(UTC-4)	
★		+13238687114 Arnille I love u lol	10/20/2019 4:34:41 PM(UTC-4)	
★		+13238687114 Arnille Blocked	10/21/2019 12:20:27 AM(UTC-4)	
★		+13238687114 Arnille Smh	10/22/2019 12:37:06 AM(UTC-4)	
★		+14243942870 What?	11/4/2019 11:21:51 PM(UTC-5)	
★		+14243942870 I miss you	11/8/2019 2:05:56 PM(UTC-5)	
★		+13238687114 Arnille U did this	11/8/2019 2:54:54 PM(UTC-5)	
★		+14243942870 I keep thinking about you	11/12/2019 6:47:33 PM(UTC-5)	
★		+13238687114 Arnille U full of shit	11/13/2019 5:18:34 PM(UTC-5)	
★		+14243942870 Miss me?	11/13/2019 5:18:56 PM(UTC-5)	
★		+14243942870 Ditto and the only Hook I got is in my dick	11/13/2019 5:19:54 PM(UTC-5)	
★		+13238687114 Arnille Be blessed	11/13/2019 5:22:00 PM(UTC-5)	
★		+13238687114 Arnille So glad I didn't believe you loved me	11/13/2019 5:22:59 PM(UTC-5)	
★		+14243942870 U too back and forth	11/13/2019 5:27:16 PM(UTC-5)	
★		+14243942870 I didn't ask you that		



+13238687114 Arille

11/13/2019 5:27:58 PM(UTC-5)

Go with who u been talking to



+13238687114 Arille

11/13/2019 5:28:34 PM(UTC-5)

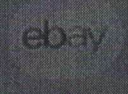
Thanks for everything

Ty >

told you he'll be ready in a few then he'll reach
me when he's ready. I don't wanna keep
g him.

I'm gonna stop asking do things for me because it
seems like it's a problem and then you wanna tell me
the way you want to do things,,smh

Text Message



Ty>

Ultimately I make the decision to do or not do. I've
very selfless when it comes to you,
accommodating your request, being Available to you
no one else was & being very supportive! So
that being said I Love you, appreciate ya and hope
understand me a little better but sometimes you
try to do too much when shit isn't in your
control.



Text Message

Ty >

number, you have 7 months left just ride it out. You
the rest of your life to MAKE MONEY the right
! And I'm All for the grind once you're home and
ocused. ..2ndly we are still learning one another &
very supportive but I'm not a YES Woman-
aning I'm not gonna do everything you ask of me all
time, I have the right to ask questions for clarity,
ultimately I make the decision to do or not do. I've
en very selfless when it comes to you,
ommodating your request being Available to you



Text Message

Ty >

m just not the type to press no one period! U just
poke to him the day before and he told you he was
Almost" ready, not Ready tomorrow. So why would I
keep texting him for him to tell me the same thing- "I'll
let you know when I'm ready". As you know you're in
control of nothing but yourself and you keep worrying
that man isn't gonna make him move no faster as you
see. Just CHILL and when he is ready he has my
number, you have 7 months left just ride it out. You

Text Message

ebay

June 15, 2022

Ms. Theresa Dawson
1339 Passmore Street
Philadelphia, PA 19111

Re: Derek Spencer

Your Honor,

I'm writing on behalf of Derek Spencer. Mr. Spencer and I have been close friends for over 20 years. During this time, he has proven to be an exemplary and responsible citizen. In general, Mr. Spencer is known for being a dedicated father and son. He has been caring for his parents, who are 81 and 84 years old. The incident in question occurred before Mr. Spencer's compassionate release in 2019. Upon that release, Mr. Spencer was working as a case manager for Philadelphia Drugs and Violence network and went on to finish school, receiving certification as a lead base inspector. While on probation, no violations have been obtained, and his probation officer has received all clean urine.

I sincerely hope the court considers this letter at the time of sentencing. Despite the current case, I still believe Mr. Spencer to be an honorable individual, a valuable community member, and a good human being.

Best Regards,

A handwritten signature in dark ink, appearing to read 'Theresa Dawson', with a large, stylized loop at the end.

United States Environmental Protection Agency

This is to certify that



Selective Realestate Group, Inc

has fulfilled the requirements of the Toxic Substances Control Act (TSCA) Section 402, and has received certification to conduct lead-based paint renovation, repair, and painting activities pursuant to 40 CFR Part 745.89

In the Jurisdiction of:

All EPA Administered States, Tribes, and Territories

This certification is valid from the date of issuance and expires May 05, 2026

NAT-F224908-1

Certification #

April 21, 2021

Issued On

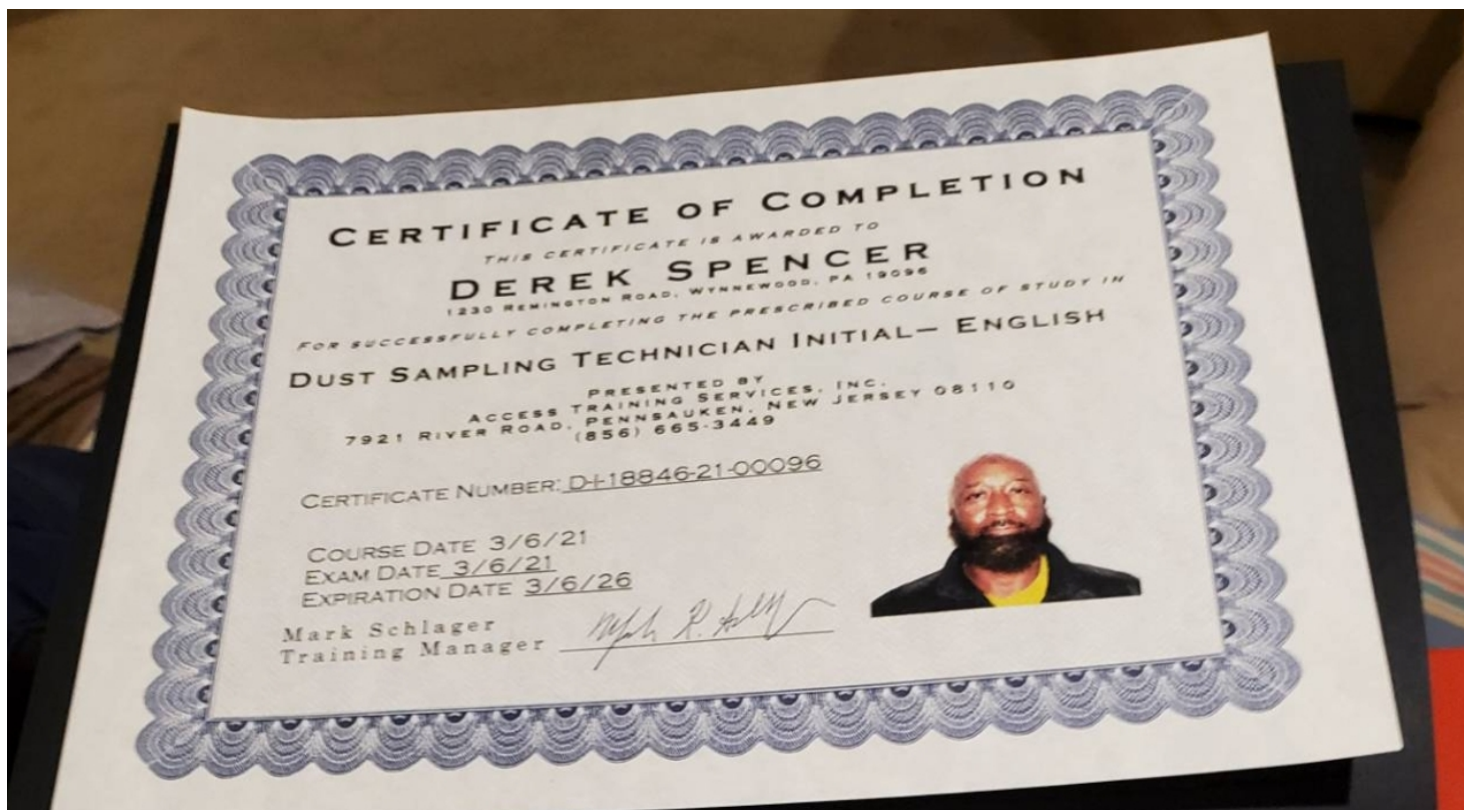


A handwritten signature in cursive script, appearing to read "Michelle Price".

Michelle Price, Chief

Lead, Heavy Metals, and Inorganics Branch

Defendant's Exhibit 8



Defendant's Exhibit 9